

### REMARKS

At the outset applicant wished to thank the Examiner for pointing out the minor informalities in claims 3 and 11. Also, applicant expresses appreciation for the extensive search and for allowing claims 17-20 on the initial Office Action. Applicant respectfully requests the Examiner to reconsider the rejection of claims 1-16 in view of the following remarks.

Claims 3 and 11 have been objected to because of questions of informalities and these have been corrected by the above amendments to those claims. Entry of the amendments and withdrawal of the objections is respectfully urged.

Claims 1-3, 5, 6, 9-11, 13 and 14 have been rejected as obvious under 35 U.S.C. §103(a), over Reuven U.S. Patent No. 5,850,636 in view of Cheney, III, U.S. Patent No. 5,143,048. Applicant respectfully traverses this rejection for the following reasons.

Reuven is cited for teaching a heatable outer cap having a water impervious outer surface and an inner liner for contacting the user's hair to help style the hair. It is noted that Reuven does not appear to disclose the use of its device for shampooing the user's hair, though it does list nine objects of the invention. One of the nine refers to hair oil treatments and another suggests it may replace a hood-type hair dryer. The inner liner is shown in Fig. 3 to be element 12, which is rubber and outer sublayers 14 are made of a cloth material, as noted on column 3, lines 50-56. There is no place in Reuven that discloses an inner liner directly in contact with the user's hair and have the capability of holding a hair cleaning compound. It is noted that the Examiner has allowed claim 17, which specifically recites the presence of a cleaning compound in the device. Independent claims 1 and 9 do not specifically recite that limitation, but do recite that the inner liner has "a fibrous texture and being sized to contact the hair of the person." Reuven does not. The Examiner has also noted that Reuven does not teach the use of a supercooled liquid as is set forth in the rejected claims.

Cheney has been cited as showing a heat source of a kind similar to that claimed herein. The Examiner has said that it would be obvious

to provide the heatable cap of Reuven with the heat source of Cheney. Applicant respectfully traverses this combination of references.

Cheney discloses a flexible container with a solution and crystals that, when the crystals are put in the solution, heat is generated. The device is intended to be placed in contact with the foot or heel of a baby in a hospital to warm the heel for the purpose of increasing circulation before taking a blood sample from the baby. The solution mixture "is designed to generate a heat of 105 degrees,  $\pm$  one degree for five minutes upon crystallization." Col. 2, lines 56-58. It is noted that the Cheney device is used in a hospital by trained personnel (if blood is drawn) and the temperature is limited to just seven degrees above normal body temperature. These teachings do not suggest that the device can be used at higher temperature, nor can they be used by a consumer without training.

The Examiner is requested to reconsider the combination of references, as being based on hindsight reasoning and not on the combined teachings of the references. Reuven does not even suggest a liner that can be used to contain a cleaning compound and has an inner liner that contains rubber (element 12, on both sides of the gel) and a cloth layer 14 that is on the outside of both the interior layer 22 and the exterior layer 24. Thus if cloth layer 14 is absorbent, the exterior of the cap is absorbent and is not water impervious. If 14 is water impervious, as claimed herein, then the inner layer is also water impervious. Fig. 3 clearly shows layer 14 on both interior layer 22 and exterior layer 24. Accordingly, Reuven does not teach applicant's cap without the heat source. It would not be obvious to replace the gel, which is in contact with the rubber layer 12 on both the interior and exterior of the cap, with a heat source that is administered by trained medical personal and limited to seven degrees above body temperature. Allowance of the claims is earnestly solicited.

Claims 4 and 12 have been rejected under 35 U.S.C. § 103(a) on the above discussed references with the addition of Lebby et al. U.S. Patent No. 6,080,690. Lebby is cited as showing a temperature sensitive portion. While the specific mechanism of Lebby is somewhat more complicated than that taught by applicant, the concept of temperature is disclosed. Having acknowledged that, it is

respectfully urged that Lebby in no way overcomes the deficiencies of the combination of references discussed above. Reconsideration and withdrawal of the rejection is requested.

Finally, claims 7, 8, 15 and 16 have been rejected under 35 U.S.C. § 103(a) on the first discussed Reuven and Cheney references, further in view of Skiba et al. U.S. Patent No. 6,047,706. Skiba is cited for disclosing a cleaning compound in a liner. Skiba does teach an inner liner that is smaller than the outer liner and fastened to the outer liner only at the periphery. Skiba does not remedy the deficiencies of the primary reference combination and specifically does not teach modifying Reuven so that the inner liner and the outer liner are different from each other. It is respectfully requested that the Examiner reconsider the rejections and allow the claims.

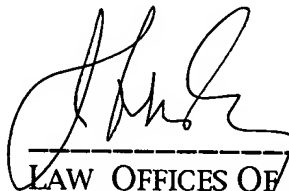
If the Examiner considers this case ready for conclusion other than by allowance, he is respectfully requested to call applicants' attorney at the number listed below.

DATE: \_\_\_\_\_

*May 11, 2004*

Respectfully submitted,  
James A. Donovan

By his Attorney



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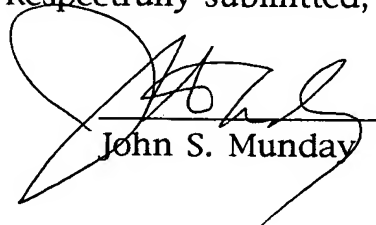
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CERTIFICATE OF MAILING

I hereby certify that the attached correspondence is being deposited with the United States Postal Service and First Class Mail in an envelope addressed to: Mail Stop Amendment with Fee, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on the date appearing below.

DATE: May 11, 2004

Respectfully submitted,

  
John S. Munday